IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 989 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL ARVINDBHAI KANJIBHAI

Appearance:

Mr.Gharania, Assistant GOVERNMENT PLEADER for Petitioners

MR YOGESH S LAKHANI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/06/2000

ORAL JUDGEMENT

The present revision application is filed by the State of Gujarat, along with the Range Forest Officer, challenging the order passed by the Assistant Judge, Porbandar, dated 23rd May, 1996, passed in Civil Miscellaneous Appeal No.50 of 1994. The present applicants are the original defendants, against whom the opponent-original plaintiff, Patel Arvindbhai Kanjibhai

has filled a suit, being Regular Civil Suit No.225 of 1994 in the Court of Civil Judge (S.D.), Porbandar. It is the case of the plaintiff in the said suit that there is an agricultural land in village Khageshri of Kutiana Taluka. According to the plaintiff, he had applied for getting the adjoining land, which is a Government land, so that he can effectively cultivate his own land and on the basis of his application, the Mamlatdar, Kutiana had passed an order, allotting two gunthas of land to him, out of Survey No.589, which is a Government land. The said land was given to him for the purpose of well etc. According to the plaintiff, he had paid the purchase price also and he had taken electric connection from the G.E.B. and had also put submersible pump on the well. It is his case that he had invested large amount in developing the aforesaid land. However, according to the plaintiff, officers of the Forest Department high-handedly snatched away possession of the aforesaid land. The aforesaid suit, therefore, for declaration and injunction was filed and along with that, Exhibit 5 application was also given in the suit for interim injunction, restraining the defendants, their servants and agents from entering into the suit land in any manner during the pendency of the suit. The learned trial Judge had initially granted an order of status quo and the defendants were directed to maintain status quo of the disputed land. Thereafter, after hearing both the sides, the learned Civil Judge (S.D.), Porbandar, by his order dated 12th July, 1994, rejected the application Exhibit 5 and order of status quo was also lifted.

The aforesaid order was challenged by the respondent herein by way of Miscellaneous Appeal under the provisions of Order 43 of the C.P.C. The aforesaid appeal was numbered as Miscellaneous Appeal No.50 of 1994. The learned Assistant Judge, Porbandar, by his Order dated 23rd May, 1996, allowed the said appeal, which was filed by the present respondent. It was observed by the appellate Judge that the Forest Department can do needful for getting possession of the suit land after following proper procedure. The appellate court also ordered that the status quo ante prevailing on 7.7.1994 should be restored within 15 days by handing over possession back to the plaintiff. The aforesaid order of the appellate court has been challenged in the present revision application by the State Government as well as by Range Forest Officer.

Initially, this Court issued notice to the respondent on 19.7.1996 and in the meanwhile, as well as until further orders, the petitioners were not to hand

over submersible pump to the present respondent. Subsequently, the matter was admitted and the impugned order of the learned appellate Judge was stayed by this Court, with the result that the possession of the aforesaid land continued to remain with the Forest Department.

It was argued by Mr.Gharania, learned A.G.P., that the land in question is a part of reserved forest land and, therefore, the Mamlatdar had no jurisdiction to transfer or sell away the land in question to the respondent-plaintiff. It is submitted by Mr.Gharania that on the date of filing the suit, the possession was already taken away by the Forest Department. As a matter of fact, according to him, on previous date of the filing of the suit, the Forest Department had taken away possession after making necessary Rojkam and, therefore, the injunction, which was sought for before the trial court, had in any way become infructuous and, there was no prayer for mandatory injunction which was made by the plaintiff. In his submission, in any case, since this is part of a forest land, the order of the Mamlatdar was absolutely without jurisdiction for transferring the same and, therefore, in his submission, the appellate court has committed not only error of law, but error of jurisdiction in exercising the appellate power, and especially when the title of the land was not with the Mamlatdar, he could not have transferred or alienated the land in favour of the respondent.

Mr.Lakhani, on the other hand, submitted that the plaintiff is an innocent citizen and he is not aware about the inter se departmental juggleries and when he had paid the price to the Mamlatdar and he developed the land, he is not supposed to verify whether the land belonged to Forest Department or any other Department and it was presumed by him that the Mamlatdar is having lawful authority to allocate or transfer the land in his favour. Mr.Lakhani further submitted that the plaintiff had invested large amount in developing the land in question and, therefore, in the interest of justice, the order of the appellate court is not required to be interfered with by this Court while exercising revisional jurisdiction under Section 115 of the C.P.C. It is not in dispute that the land in question is part of the reserved forest land and before filing the suit, on earlier day, possession was already taken away by the Forest Department by making necessary Rojkam to that effect. The prayer for injunction, restraining the defendants from interfering with the possession of the plaintiff, therefore, was infructuous in view of the

aforeaid fact. The appellate court, however, granted order in the nature of mandatory direction, asking the Department to restore the status quo ante, considering the fact that the plaintiff had suffered for no fault on his part. It is no doubt true that the plaintiff is not expected to make detailed enquiry, especially when the Mamlatdar decided to transfer the aforesaid land in favour of the plaintiff on payment of requisite price. However, if some Government Officer, without verifying the record, has transferred or alienated reserved forest land, which he could not have done under the provisions of law, it cannot be said that any valid title was conferred in favour of the plaintiff. In any case, when the plaintiff was not in possession of the land in question on the date of filing of the suit, there was no question of granting injunction in his favour much less mandatory type of injunction, even though there was no prayer to that effect in Exhibit 5. The learned appellate Judge has specifically directed to hand over the possession to the plaintiff. The said direction presupposes that the plaintiff is not in possession when the appellate court disposed of the appeal. In my view, granting of the aforesaid relief is beyond the prayer of the plaintiff and in the facts and circumstances of the case, no such mandatory direction could have been granted by the appellate Judge. Normally, status quo on the date of filing of the suit is required to be maintained by the Court while granting interim relief. By granting interim order, no new rights can be created in favour of any side. The learned appellate Judge, therefore, has clearly erred in giving the aforesaid direction, which could not have been granted, especially when prima facie it is found that the land in question was part of reserved forest land. The order of the appellate court is, therefore, not sustainable at all and deserves to be quashed and set aside. This order was stayed by this Court while admitting the revision application and since 1996, this order of the appellate court is already stayed. Under these circumstances as well as, as per the reasoning given hereinabove, the order of the appellate court deserves to be set aside.

Mr.Lakhani, however, submitted that the submersible pump, which belongs to the original plaintiff, is not handed over to him, presumably because this Court, while issuing notice, has said that it will not be necessary for the Department to hand over the same. However, in the facts and circumstances of the case, especially when the respondent initially entered the land in question in view of the order of the Mamlatdar, in fairness, the Department should hand over

the aforesaid pump of the respondent back to him. It would be open for the Department to proceed against the plaintiff in accordance with law in case it is necessary to confiscate if at all there is any justification for the same and the plaintiff-respondent has assured this Court, through his Advocate, that as and when necessary, he will be willing to produce the aforesaid pump before the Department. It is directed that during the pendency of the suit, the respondent will not transfer the aforesaid pump to any one and will keep the possession with him. The petitioners-original defendants are also directed not to alienate or transfer the disputed land to any one during the pendency of the suit and the existing status quo of the land may be maintained.

With these observations, the revision application is allowed. The order of the learned Assistant Judge, Porbandar is set aside and that of the trial court passed below Exhibit 5 in Civil Suit No.225 of 1994 is restored.

Rule is accordingly made absolute. No order as to costs.

Since the plaintiff has suffered for no fault on his part, the learned Civil Judge (S.D.), Porbandar is directed to dispose of Civil Suit No.225 of 1994 at the earliest and, in any case, before 31st December, 2000. It is clarified that observations made in this judgment is only tentative and it will have no bearing on the aforesaid suit, which is required to be disposed of purely as per the evidence which might be adduced by the parties at the time of trial and also in accordance with law.

23rd June, 2000 (P.B. Majmudar, J.)

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(apj)